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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

WILLIAM MIGHT,  
Plaintiff,

v.

CAPITAL ONE BANK (USA), N.A.,  
Defendants.

CIVIL ACTION CASE NO.  
CIV-18-716-R

**COMPLAINT AND JURY TRIAL  
DEMAND**  
(Telephone Consumer Protection Act)

**COMPLAINT**

WILLIAM MIGHT (“Plaintiff”), by and through his attorneys, alleges the following against CAPITAL ONE BANK (USA), N.A. (“Defendants”):

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendants, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter “TCPA”), 47 U.S.C. § 227 *et seq.*

**JURISDICTION AND VENUE**

2. Defendants conduct business in the state of Oklahoma, and therefore, personal jurisdiction is established. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).
3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740

1 (2012), holding that federal and state courts have concurrent jurisdiction over  
2 private suits arising under the TCPA.

- 3 4. Venue is proper in the United States District Court for the Western District  
4 of Oklahoma pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within  
5 this District and a substantial part of the events or omissions giving rise to the  
6 herein claims occurred, or a substantial part of property that is the subject of  
7 the action is situated within this District.  
8

9  
10 **PARTIES**

- 11 5. Plaintiff is a natural person residing in the county of Oklahoma, in the city of  
12 Edmond, Oklahoma.  
13  
14 6. Defendant CAPITAL ONE BANK (USA), N.A., is a Delaware corporation  
15 doing business in the State of Oklahoma with its principal place of business  
16 located in McLean, Virginia.  
17  
18 7. At all times relevant to this Complaint, Defendant has acted through its agents  
19 employees, officers, members, directors, heir, successors, assigns, principals,  
20 trustees, sureties, subrogees, representatives and insurers.

21 **FACTUAL ALLEGATIONS**

- 22 8. Defendant placed collection calls to Plaintiff seeking and attempting to  
23 collect on alleged debts owed by Plaintiff.  
24  
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1 9. Defendant placed collection calls to Plaintiff's cellular telephone at phone  
2 number (312) 550-57XX

3 10. Defendants placed collection calls to Plaintiff from phone numbers including,  
4 but not limited to, (800) 955-6600.

5 11. Per its prior business practices, Defendant's calls were placed with an  
6 automated telephone dialing system ("auto-dialer").

7 12. Defendant used an "automatic telephone dialing system", as defined by 47  
8 U.S.C. § 227(a)(1) to place its telephone calls to Plaintiff seeking to collect a  
9 consumer debt allegedly owed by Plaintiff, WILLIAM MIGHT.  
10

11 13. Defendants' calls constituted calls that were not for emergency purposes as  
12 defined by 47 U.S.C. § 227(b)(1)(A).  
13

14 14. Defendants' calls were placed to a telephone number assigned to a cellular  
15 telephone service for which Plaintiff incurs a charge for incoming calls  
16 pursuant to 47 U.S.C. § 227(b)(1).  
17

18 15. Defendants never received Plaintiff's "prior express consent" to receive calls  
19 using an automatic telephone dialing system or an artificial or prerecorded  
20 voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).  
21

22 16. On January 5, 2018, Plaintiff called into Defendants companies at phone  
23 number (800) 955-6600. Plaintiff spoke with Defendants' female  
24  
25

1 representative (“Priscilla”) and requested that Defendant cease calling  
2 Plaintiff’s cellular telephone.

3 17. During the conversation on January 5, 2018, Plaintiff gave Defendant his  
4 social security number and date of birth to assist Defendant in accessing his  
5 accounts before asking Defendants to stop calling his cellular telephone  
6 regarding all of his accounts.  
7

8 18. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his  
9 cellular telephone and/or to receive Defendants’ calls using an automatic  
10 telephone dialing system in his conversation with Defendants’ representative  
11 on January 5, 2018.  
12

13 19. Despite Plaintiff’s request, Defendant continued to place collection calls to  
14 Plaintiff after January 5, 2018.  
15

16 20. Despite Plaintiff’s January 5, 2018 request that Defendant cease placing  
17 automated collection calls, Defendants placed at least two hundred and  
18 thirteen (213) automated calls to Plaintiff’s cellular telephone after January  
19 5, 2018.  
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1                                   **FIRST CAUSE OF ACTION**  
2                                   **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
3                                   **PROTECTION ACT**  
4                                   **47 U.S.C. § 227**

5           21. Plaintiff repeats and incorporates by reference into this cause of action the  
6           allegations set forth above at Paragraphs 1-20.

7           22. The foregoing acts and omissions of Defendants constitute numerous and  
8           multiple negligent violations of the TCPA, including but not limited to each  
9           and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

10          23. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq.,  
11          Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and  
12          every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

13          24. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in  
14          the future.  
15

16  
17                                   **SECOND CAUSE OF ACTION**  
18                                   **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
19                                   **CONSUMER PROTECTION ACT**  
20                                   **47 U.S.C. § 227 et. seq.**

21          25. Plaintiff repeats and incorporates by reference into this cause of action the  
22          allegations set forth above at Paragraphs 1-20.

23          26. The foregoing acts and omissions of Defendants constitute numerous and  
24          multiple knowing and/or willful violations of the TCPA, including but not  
25

1 limited to each and every one of the above cited provisions of 47 U.S.C. §  
2 227 et seq.

3 27.As a result of Defendants' knowing and/or willful violations of 47 U.S.C. §  
4 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages,  
5 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47  
6 U.S.C. § 227(b)(3)(C).  
7

8 28.Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in  
9 the future.  
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, WILLIAM MIGHT, respectfully requests judgment  
13 be entered against Defendant, CAPITAL ONE BANK (USA) N.A. for the  
14 following:

15 **FIRST CAUSE OF ACTION**

16 29.For statutory damages of \$500.00 multiplied by the number of TCPA  
17 violations alleged herein (213), \$106,500.00;

18 30.Actual damages and compensatory damages according to proof at time of  
19 trial;

20 **SECOND CAUSE OF ACTION**

21 31.For statutory damages \$1,500.00 multiplied by the number of TCPA  
22 violations alleged herein (213), \$319,500.00;

23 32.Actual damages and compensatory damages according to proof at time of  
24 trial;  
25

**ON ALL CAUSES OF ACTION**

33. Actual damages and compensatory damages according to proof at time of trial;

34. Costs and reasonable attorneys' fees;

35. Any other relief that this Honorable Court deems appropriate.

**JURY TRIAL DEMAND**

36. Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED,

Dated: July 24, 2018

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